

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDERSON NEWS, L.L.C. and LLOYD WHITAKER,
as the Assignee under an Assignment for the Benefit of
Creditors for Anderson Services, L.L.C.,

Plaintiffs,

- against -

AMERICAN MEDIA, INC., BAUER PUBLISHING
CO., L.P., CURTIS CIRCULATION COMPANY,
DISTRIBUTION SERVICES, INC., HACHETTE
FILIPACCHI MEDIA U.S., INC., HEARST
COMMUNICATIONS, INC., HUDSON NEWS
DISTRIBUTORS LLC, KABLE DISTRIBUTION
SERVICES, INC., RODALE, INC., TIME INC., and
TIME/WARNER RETAIL SALES & MARKETING,
INC.,

Defendants.

No. 09 Civ. 2227 (PAC)

AMERICAN MEDIA, INC., HEARST
COMMUNICATIONS, INC., and TIME INC.,

Counterclaim-Plaintiffs,

- against -

ANDERSON NEWS, L.L.C. and CHARLES
ANDERSON, JR,

Counterclaim-Defendants.

**DECLARATION OF RACHEL M. FRITZLER IN SUPPORT OF
DEFENDANTS' MOTION TO EXCLUDE
THE PROFFERED EXPERT TESTIMONY OF DR. THOMAS Z. LYS**

I, Rachel M. Fritzler, declare as follows:

1. I am associated with the law firm of Cravath, Swaine & Moore LLP, counsel to defendants Time Inc. and Time/Warner Retail Sales & Marketing, Inc. in the above-captioned action.

2. I submit this declaration in support of Defendants' Motion to exclude the proffered expert testimony of Dr. Thomas Z. Lys.

3. Attached hereto as Exhibit 1 is a true and correct copy of the expert report of Thomas Z. Lys submitted April 16, 2014. The report contains information designated "Highly Confidential" by parties and third parties pursuant to the Amended Stipulation and Confidentiality Order entered in this action (Dkt. 201) (the "Protective Order"), and will be filed under seal.

4. Attached hereto as Exhibit 2 is a true and correct copy of the response expert report of Thomas Z. Lys submitted July 16, 2014. The report contains information designated "Highly Confidential" by parties and third parties pursuant to the Protective Order, and will be filed under seal.

5. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the deposition of Dr. Lys, held on September 19, 2014.

6. Attached hereto as Exhibit 4 is a true and correct copy of an e-mail and the attached transcript of a conference call held on January 14, 2009, produced by plaintiffs Anderson News and Anderson Services (together, "Plaintiffs"), Bates-stamped ANEWS0151840-59. The document contains information designated "Confidential" by parties and third parties pursuant to the Protective Order, and will be filed under seal.

7. Attached hereto as Exhibit 5 is a true and correct copy of an e-mail chain and attachment produced by Plaintiffs, Bates-stamped ANEWS0028719-21. The e-mail contains

information designated “Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

8. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the deposition of Joel Anderson, held on December 20, 2013.

9. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the deposition of Jay Maier, held on November 21, 2013. Mr. Maier’s deposition has been designated “Confidential” pursuant to the Protective Order, and will be filed under seal.

10. Attached hereto as Exhibit 8 is a true and correct copy of an e-mail and attachment produced by Plaintiffs, Bates-stamped ANEWS0141762-79. The e-mail contains information designated “Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

11. Attached hereto as Exhibit 9 is a true and correct copy of a document produced by Plaintiffs, Bates-stamped MBHN00124761. The document contains information designated “Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

12. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from the deposition of David Thompson, held on February 6, 2014.

13. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from the deposition of John Campbell, held on December 11 and 12, 2013. Mr. Campbell’s deposition has been designated “Confidential” pursuant to the Protective Order, and will be filed under seal.

14. Attached hereto as Exhibit 12 is a true and correct copy of excerpts from the deposition of Patrick Bowman, held on February 25, 2014.

15. Attached hereto as Exhibit 13 is a true and correct copy of an excerpt from the Report of Don A. Beskrone, Examiner entered in the bankruptcy proceeding *In re Anderson News, LLC*, No. 09-cv-10695, Doc. 852 (D. Del. filed June 24, 2011). The excerpted portion is not under seal.

16. Attached hereto as Exhibit 14 is a true and correct copy of a document produced by Plaintiffs, Bates-stamped ANEWS0163756. The document contains information designated “Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

17. Attached hereto as Exhibit 15 is a true and correct copy of a document produced by Plaintiffs, Bates-stamped ANEWS0215665. The document contains information designated “Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

18. Attached hereto as Exhibit 16 is a true and correct copy of a document produced by Plaintiffs, Bates stamped ANEWS0057728-41. The document contains information designated “Highly Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

19. Attached hereto as Exhibit 17 is a true and correct copy of excerpts from the deposition of Charles Anderson, Jr., held on October 24, 2013.

20. Attached hereto as Exhibit 18 is a true and correct copy of an e-mail produced by Plaintiffs, Bates-stamped MBHN00125528-30, and an excerpt from an attachment to that e-mail, Bates-stamped MBHN00126829-37. The attachment contains information designated “Highly Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

21. Attached hereto as Exhibit 19 is a true and correct copy of a document produced by Plaintiffs, Bates-stamped ANEWS0187656. The document contains information designated "Confidential" by parties and third parties pursuant to the Protective Order, and will be filed under seal.

22. Attached hereto as Exhibit 20 is a true and correct copy of an e-mail and attachment produced by Plaintiffs, Bates-stamped ANEWS0152535-38. The e-mail contains information designated "Confidential" by parties and third parties pursuant to the Protective Order, and will be filed under seal.

23. Attached hereto as Exhibit 21 is a true and correct copy of excerpts from the deposition of Frank Stockard, held on October 3, 2013.

24. Attached hereto as Exhibit 22 is a true and correct copy of excerpts from the expert report of Neil J. Beaton, submitted May 28, 2014. The report contains information designated "Highly Confidential" by parties and third parties pursuant to the Protective Order, and will be filed under seal.

25. Attached hereto as Exhibit 23 is a true and correct copy of excerpts from the expert report of Leslie M. Marx, submitted April 16, 2014. The report contains information designated "Highly Confidential" by parties and third parties pursuant to the Protective Order, and will be filed under seal.

26. Attached hereto as Exhibit 24 is a true and correct copy of excerpts from the deposition of Leslie M. Marx, held on September 18, 2014.

27. Attached hereto as Exhibit 25 is a true and correct copy of excerpts from the expert report of Robert G. Picard, submitted April 16, 2014. The report contains information designated "Highly Confidential" by parties and third parties pursuant to the Protective Order, and will be filed under seal.

28. Attached hereto as Exhibit 26 is a true and correct copy of excerpts from a document produced by defendant Time/Warner Retail Sales & Marketing, Inc. (“TWR”), Bates-stamped TWRAND00028098, TWRAND0002811-17 and TWRAND00028120-22. The document contains information designated “Highly Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

29. Attached hereto as Exhibit 27 is a true and correct copy of excerpts from a document produced by TWR, Bates-stamped TWRAND00035149, TWRAND00035164 and TWRAND00035167-69. The document contains information designated “Highly Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

30. Attached hereto as Exhibit 28 is a true and correct copy of excerpts from a document produced by TWR, Bates-stamped TWRAND00037831-33 and TWRAND00037856-58. The document contains information designated “Highly Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

31. Attached hereto as Exhibit 29 is a true and correct copy of a document produced by defendant American Media, Inc., Bates-stamped AMIDSI00005640. The document contains information designated “Highly Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

32. Attached hereto as Exhibit 30 is a true and correct copy of a document produced by non-party The News Group, Bates-stamped TNG0000928-931. The document contains information designated “Highly Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

33. Attached hereto as Exhibit 31 is a true and correct copy of excerpts from the expert reply report of Robert G. Picard, submitted July 16, 2014. The report contains

information designated “Highly Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

34. Attached hereto as Exhibit 32 is a true and correct copy of excerpts from *Valuing a Business: The Analysis and Appraisal of Closely Held Companies*, by Shannon P. Pratt and Alina V. Niculita.


35. Attached hereto as Exhibit 33 is a true and correct copy of excerpts from *Handbook of Advanced Business Valuation*, by Robert F. Reilly and Robert P. Schweihs.

36. Attached hereto as Exhibit 34 is a true and correct copy of excerpts from *Proving Antitrust Damages: Legal and Economic Issues*, published by the ABA Section of Antitrust Law.

37. Attached hereto as Exhibit 35 is a true and correct copy of a document produced by Neil J. Beaton at his September 26, 2014 expert deposition, updating certain tables in his expert report submitted May 28, 2014. The table contains information designated “Highly Confidential” by parties and third parties pursuant to the Protective Order, and will be filed under seal.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 19, 2014.


Rachel M. Fritzler